

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
v.) 3:08-CR-175
) JUDGES PHILLIPS/SHIRLEY
CLARK ALAN ROBERTS, and)
SEAN EDWARD HOWLEY,)
)
Defendants.)

**GOVERNMENT'S RESPONSE TO DEFENDANTS' MOTION FOR DEPOSITIONS TO
PRESERVE TESTIMONY FOR TRIAL**

COMES NOW the United States of America, by and through its undersigned counsel and hereby files this response in opposition to Defendants' Motion for Depositions to Preserve Testimony at Trial and respectfully requests that the Motion be denied.

Defendant's appear to have filed the motion to alert the court to the possibility that they may request to depose potential witnesses, however, they have failed to specify who they wish to depose and why their pre-trial depositions are necessary. Federal Rule of Criminal Procedure 15(a) states:

Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition....

See *United States v. Campbell*, 845 F.2d 1374, 1378 (6th Cir.1988)(Court found elderly and infirm witness presented "exceptional circumstance" supporting pre-trial deposition). The words "exceptional circumstances" signify that only in extraordinary cases will depositions be compelled. *United States v. Dillman*, 15 F.3d 384, 389 (5th Cir.1994).

Since the defendants' have at this point failed to identify any witnesses or cite any

“exceptional circumstance” warranting the use of Rule 15(a), their Motion should be denied. The United States respectfully requests to reserve its right to further respond if the defendants file a supplemental request for depositions.

Respectfully submitted,

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s/ Thomas S. Dougherty
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CERTIFICATE OF SERVICE

I hereby certify that, on June 5, 2009, a copy of the foregoing RESPONSE TO DEFENDANTS' MOTION FOR DEPOSITIONS TO PRESERVE TESTIMONY FOR TRIAL was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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